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No. 08-209

Supreme Court, U.S.
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In The

Supreme Court of the United States

JOHN HATTON,

Petitioner,

vs.

DANIEL D. GRIGAR,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether the Court of Appeals properly applied the doctrine of res judicata in this case by affirming the dismissal of Petitioner's suit in Trespass to Try Title in the United States District Court.

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CASES CITED:

Hatton, et al. v. Grigar, 66 S.W. 3d 545 (CA 14th Dist. Jan. 17, 2002).....1

Martin v. Amerman, 133 S.W. 3d 262 (Texas 2004).....1

Test Masters Educ. Services, Inc. v. Singh, 428 F. 3d 559 (CA 5 2005).....3

RESPONDENT'S OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

1. This appeal is about a final state court judgment granting an easement and declaring a strip of land to be a public road.

2. On June 22, 2000, a Judgment of the 268th Judicial District Court of Fort Bend County, Texas in cause of action Number 98,376 was entered granting an easement to GRIGAR and declaring a strip of land to be a public road. The Judgment awarded GRIGAR a road easement over property owned by HATTON and gave GRIGAR a judgment for costs of court and attorney's fees. The issue of whether the case should have been tried by a Trespass to Try Title cause of action and not a declaratory judgment action was not raised in the trial court or the appeal that was affirmed on January 17, 2002. Hatton, et al. v. Grigar CA 14th Dist. Jan. 17, 2002; 66 S.W. 3d 545.

3. The case that Petitioner makes reference to (Martin v. Amerman 133 S.W. 3d 262) was a Texas Supreme Court case decided in 2004, some four years subsequent to the date of the initial trial that is the basis of Petitioner's Petition for Writ of Certiorari.

4. The Trespass to Try Title suit that HATTON filed in the U. S. District Court on December 15, 2006 under Federal Cause of Action Number H-063981 has the same issues between the same parties that were litigated in Cause of Action Number 98,376 in the

District Court of Fort Bend County, Texas, that became final as cited. HATTON is seeking to try the same set of facts with the same parties a second time with his Trespass to Try Title cause of action that was filed in 2006 in the Federal District Court. The Federal Trial court dismissal order was correct and was affirmed for the reasons stated in the Judgment of the United States Court of Appeals for the Fifth Circuit under Cause Number 07-20318.

5. Petitioner has never introduced any evidence that he is a poor, outspoken, black man as alleged in his Statement of the Case. The record is completely void of any evidence concerning his color or his economic status or any facts that would support any kind of discrimination claim.

6. Respondent, DANIEL D. GRIGAR, is seeking and has only requested of the courts the relief granted him, that is an easement to use the road for access to and from his property.

SUMMARY OF THE ARGUMENT

The Petition for Writ of Certiorari filed by the Petitioner should be denied for the reasons stated by the Judges in their opinion filed December 14, 2007, in the United States Court of Appeals for the Fifth Circuit.

ARGUMENT

The facts, parties and issues contained in HATTON's Trespass to Try Title action that was filed in the Federal Court and the Declaratory Judgment action that was tried in the State Court and affirmed are identical. The doctrine of res judicata as stated in Test Masters Educ. Services, Inc. v. Singh, 428 F. 3d 559 (CA 5 2005) should apply in this appeal.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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